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In the Supreme Court of the United States

OCTOBER TERM, 1959

INTERNATIONAL ASSOCIATION OF TOOL CRAFTSMEN, ET AL., PETITIONERS

v.

PAUL M. HERZOG, ET AL., INDIVIDUALLY AND AS CHAIRMAN AND MEMBERS OF THE NATIONAL LABOR RELATIONS BOARD

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

J. LEE RANKIN,
Solicitor General,
Department of Justice, Washington 25, D.C.

ROTHMAN,
General Counsel,

E. L. MANOLI,
Associate General Counsel,

L. COME,
Assistant General Counsel,

C. PARAS,
Attorney,
National Labor Relations Board,
Washington 25, D.C.

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In the Supreme Court of the United States

OCTOBER TERM, 1959

No. 964

INTERNATIONAL ASSOCIATION OF TOOL CRAFTSMEN, ET AL., PETITIONERS

v.

BOYD LEEDOM, ET AL., INDIVIDUALLY AND AS CHAIRMAN AND MEMBERS OF THE NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The order of the District Court granting respondents' motion for summary judgment is set forth at R. 128-129.[1] The opinion of the court below (Pet. 1a-5a), affirming the order of the District Court, is reported at 276 F. 2d 514. The Board decision in-

[1] References are to the portion of the record printed as a Joint Appendix to the briefs in the court below.

volved in this case (R. 6-19) is reported at 120 NLRB 1215.

JURISDICTION

The judgment of the Court of Appeals was entered on February 29, 1960 (Pet. 2). The petition for a writ of certiorari was filed on May 27, 1960. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the District Court has jurisdiction to review a Board determination under Section 9 of the National Labor Relations Act that craft severance elections should be held in the existing multi-plant bargaining unit, rather than in single plant units, where it appears that such determination turns on considerations involving an exercise of the Board's judgment and discretion and does not encounter any statutory prohibition.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151, *et seq.*), are set forth at pp. 3-4 of the petition.

STATEMENT

A. The Board representation proceedings

Since 1938, the United Automobile Workers Union has been the major bargaining representative of General Motors' employees. U.A.W. was originally certified, pursuant to Board-conducted elections, on a sep-

arate plant basis, for each of 120 G.M. plants. However, the parties have always negotiated a single, company-wide contract covering, in virtually identical terms, all the plants at which U.A.W. was the collective bargaining agent. This single, centralized bargaining procedure has resulted in the obliteration of the previously existing plant units and in the creation of a single, company-wide bargaining unit encompassing the 120 U.A.W.-represented plants (R. 12).

On April 4, 1958, petitioners, International Association of Tool Craftsmen and International Society of Electrical Craftsmen, filed separate petitions with the Seventh Regional Director of the National Labor Relations Board requesting representation rights at the Pontiac Motors Division of the General Motors Corporation. Separate petitions were filed for the tool room employees in Dept. 345, for the tool inspectors in Dept. 347, for the tool and die employees in Dept. DA45, etc. (R. 101-117). A consolidated hearing was held on these petitions in Detroit, from May 6 to May 16, 1958.[2] At the close of the hearing, pursuant to established Board procedure,[3] the Regional Director forwarded the entire record in these cases, including a stenographic transcript of the hear-

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[2] The records of the representation cases were annexed as exhibits to the Board's motion for summary judgment in the District Court and were part of the record before the court below. The U.A.W. was permitted to intervene in all the proceedings, on the basis of its standing as the collective bargaining representative of the employees involved (R. 10).

[3] NLRB Rules and Regulations and Statements of Procedure, Series 8, Sec. 102.67.

ing, to the Board in Washington for final disposition of the matters raised by the petitions.

In view of the importance of the issues raised by the petitions and the fact that a large number of similar petitions had been filed in Regional Offices throughout the country, the Board directed that oral argument be presented in Detroit on May 21, 1958, on the question whether collective bargaining in the automobile industry should continue on an industrial unit basis or whether separate crafts should be permitted to bargain for their particular members. The Board, in other words, invited argument on whether the so-called *National Tube* doctrine,[4] applicable to the steel and certain other basic industries, should be applied to the automobile industry (R. 9-10).

At this hearing, GM prefaced its submission of views on the *National Tube* issue by moving to dismiss the petitions involved on the ground that the units sought were in any event inappropriate. GM contended that craft elections, if directed, could properly be held only in the multiplant unit as a whole, whereas the petitions sought such elections on a single plant basis (R. 10-11, 38).

On May 22, the Board sent telegrams to the other parties to the proceeding, notifying them that, should they desire to respond to GM's motion, they should do so on or before 5 p.m., May 26. Petitioners filed

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[4] In *National Tube*, 76 NLRB 1199, the Board dismissed a petition to sever a unit of bricklayers from an existing industrial unit on the ground that the integrated nature of the operations in the steel industry necessitated the maintenance of the plant-wide industrial unit.

an opposition to the motion, setting forth reasons why the Board should not dismiss their petitions (R. 11-12, 20-24). In conjunction with the opposition, petitioners submitted a request for oral argument on the motion (R. 21-26).

On May 28, the Board issued its decision and order dismissing the representation petitions. The Board found "on the entire record, that in consequence of [the] long history of collective bargaining and the exclusive recognition accorded the UAW by GM on a multiplant basis, there has come into existence and there now exists a single company-wide bargaining unit embracing all those plants of the company in which the UAW has in the past been recognized as the exclusive representative, and which are covered by the existing national agreement." Applying its established principle that "requests for severance elections must be co-extensive with the existing bargaining unit from which a union seeks to detach specified categories of workmen," the Board concluded, in agreement with GM's contention, that the single-plant units sought by petitioners were "too narrow in scope and therefore inappropriate for purposes of collective bargaining" (R. 16).[5]

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[5] In this decision, the Board denied petitioners' request for oral argument, stating that because "the lengthy and very comprehensive records in the 3 General Motors cases reveal a full and detailed picture of the history and methods with respect to the collective bargaining between that Company and U.A.W., no useful purpose would be served by further oral argument on the Company's motion" (R. 16, n. 13).

On June 23, petitioners filed with the Board a motion for reconsideration of this decision, requesting additionally that elections be held pursuant to their original petitions (R. 26-30). On July 7, the Board denied the motion "on the ground that nothing [was] presented that [had] not been previously considered by the Board" (R. 31-33).

B. The judicial proceedings

On August 30, 1958, petitioners brought suit in the District Court, seeking a mandatory injunction which would set aside the Board's decision and order the Board to reinstate the representation petitions and to proceed to elections thereon. The gravamen of the complaint was that the Board, in dismissing petitioners' representation petitions, violated Section 9 (b) (2) of the Act (R. 2-5).[6] No allegation was made that the Board violated any other statutory provision (*ibid.*). In response, the Board moved to dismiss the complaint and, in the alternative, for summary judgment, on the grounds that the court lacked jurisdiction of the subject matter of the action and that the complaint failed to state a claim warranting relief. On November 17, petitioners filed a cross-motion for summary judgment based on the same ground set forth in their original complaint (R. 117-118). On December 17, the District Court granted the Board's motion for summary judgment and denied petitioners' cross-motion (R. 129).

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[6] Section 9(b) (2) provides that the Board shall not "decide that any craft unit is inappropriate for [bargaining] purposes on the ground that a different unit has been established by a prior Board determination * * *."

On appeal, petitioners abandoned their contention that the Board had acted contrary to Section 9(b)(2) and urged, for the first time, that the Board's decision contravened Section 9(c)(5) of the Act.[7] The Court of Appeals held that the Board, in dismissing the representation petitions in question, had not acted "in excess of its delegated powers and contrary to a specific prohibition in the Act." Accordingly, it concluded, the District Court lacked jurisdiction to review the Board's denial of single plant, craft units in this case and had properly dismissed petitioners' suit. (Pet. 3a-5a).

ARGUMENT

1. *Leedom* v. *Kyne*, 358 U.S. 184, permits an exception to the general rule that Board representation determinations are not reviewable in the district courts. The exception, however, is confined to the case where it is plain that the Board has exceeded statutory or constitutional requirements and no other adequate remedy exists for redress of the wrong. In the absence of such a showing, district court review is barred. See *National Biscuit Division* v. *Leedom*, 265 F. 2d 101 (C.A. D.C.), certiorari denied, 359 U.S. 1011; *Norwich Conn. Printing Specialties, Local Union No. 494* v. *Leedom*, 275 F. 2d 628 (C.A. D.C.), certiorari denied, 362 U.S. 969; *Leedom* v. *I.B.E.W.*, 45 LRRM 3005, decided March 24, 1960 (C.A. D.C.). It is clear, as the court below found, that the required showing cannot be made here.

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[7] Section 9(c)(5) provides that in determining whether a unit is appropriate for bargaining purposes "the extent to which the employees have organized shall not be controlling."

Section 9(b) of the Act vests the Board with power to "decide in each case whether * * * the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof." Subparagraph (2) of the section provides, further, that the Board shall not decide that any craft unit is inappropriate "on the ground that a different unit has been established by a prior Board determination * * *." The Board thus has broad discretion to establish or not to establish a craft unit, with the proviso that it may not decline to do so simply because a large unit had previously been found to be appropriate. The Board declined to find the craft units sought by petitioners appropriate; not on the ground that craft units *per se* were barred in the automobile industry, but merely because it would be better to have them established on a company-wide rather than a plant-wide basis. This is not the kind of determination barred by Section 9(c)(5), as petitioners implicitly recognize in failing to argue the point in the petition. The Board decision rests simply upon a judgment that the same factors of central control and integration of operations which make it appropriate to establish an industrial unit on a multiplant rather than a plant basis also require that, when a craft is sought to be severed from such a bargaining unit, the severance include all the employees in that craft throughout the entire unit.[8] This

[8] See *American Steel Foundries*, 101 NLRB 655; *T. C. King Pipe Co.*, 74 NLRB 468; *Western Electric Co.*, 71 NLRB 1029.

conclusion represents a reasonable accommodation of the Act's competing policies of insuring stability and at the same time affording employees freedom in their choice of a representative. The effectuation of these policies falls within "the wide area of determinations which depends on the Board's expertise and discretion" (Pet. 4a) and is beyond the reviewing jurisdiction of a district court.

2. There is no substance to petitioners' contention (Pet. 11-12) that the Board violated the requirement of Section 9(b) of the Act that it "decide in each case" what the appropriate unit shall be. The Board decision (R. 8-19) shows that it arrived at the conclusion that a single company-wide bargaining unit had been created after a careful review of the past bargaining history and the integrated nature of GM's operations. By applying the principle that any craft severance would have to be coextensive with this unit, the Board necessarily decided that, on the facts of this case, a company-wide unit was an appropriate one. Nor was the decisional process incomplete merely because the craft severance principle applied had been formulated in earlier cases; the application of that principle here reflects a judgment that the considerations which led to its original formulation likewise pertained to this case. Compare *Republic Aviation Corp.* v. *National Labor Relations Board*, 324 U.S. 793; *National Labor Relations Board* v. *Seven-Up Bottling Co.*, 344 U.S. 344, 348-349; *Securities & Exchange Commission* v. *Chenery Corp.*, 332 U.S. 194, 202; *United States* v. *Storer Broadcasting Co.*, 351 U.S. 192.

3. Similarly without substance is petitioners' contention (Pet. 11) that the Board's denial of oral argument on their opposition to GM's motion to dismiss their petitions violated due process. Neither the Constitution nor the Act guarantees oral argument in all situations. See *FCC* v. *WJR*, 337 U.S. 265, 281-282; *Morgan* v. *United States*, 298 U.S. 468, 481; *National Labor Relations Board* v. *Clausen*, 188 F. 2d 439, 444 (C.A. 3), certiorari denied, 342 U.S. 868; *Fay* v. *Douds*, 172 F. 2d 720, 725 (C.A. 2); NLRB Rules and Regulations and Statements of Procedure, Series 8, Sec. 102.68. Since the issues sought to be raised involved questions of law and policy on which briefs had been submitted and since the comprehensive record gave a full picture of the bargaining situation, the Board was amply warranted in concluding that "no useful purpose would be served by further oral argument on the Company's motion" (R. 16, n. 13). Moreover, it should be noted that petitioners also had an opportunity to present their views to the Board in a motion for reconsideration (R. 28-30), which the Board denied after due consideration (R. 32-33).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

J. LEE RANKIN,
Solicitor General.

STUART ROTHMAN,
General Counsel,

DOMINICK L. MANOLI,
Associate General Counsel,

NORTON J. COME,
Assistant General Counsel,

JAMES C. PARAS,
Attorney,
National Labor Relations Board.

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